

REMARKS

This Response, filed in reply to the Office Action dated January 31, 2006, is believed to be fully responsive to each point of rejection raised therein. Accordingly, favorable reconsideration on the merits is respectfully requested.

Claims 1-16 remain pending in the application. Claims 1-16 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 09/988,658 (hereafter "'658 application", which corresponds to U.S. patent publication 2002/0090126). Applicant respectfully submits the following comments in traversal of the rejection.

With regard to provisional nonstatutory obviousness-type double patenting rejections, the Manual of Patent Examining Procedure (MPEP) provides the following:

1. If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. MPEP 804.

In this case, the present application is the earlier filed application than the '658 application. (The filing date of the present application is March 8, 2001, and the filing date of the '658 application is November 20, 2001.) Further, the provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the present application, and the '658 application presently stands rejected on other grounds.¹ Therefore, the examiner should withdraw the provisional nonstatutory obviousness-type double patenting rejection and permit

¹ Applicant does not hereby concede to the propriety of that rejection.

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Application No. 09/800,773

Attorney Docket No. Q61190

the present application to issue as a patent without a terminal disclaimer, according to MPEP
804.

In view of the above, reconsideration and allowance of this application are now believed
to be in order, and such actions are hereby solicited. If any points remain in issue which the
Examiner feels may be best resolved through a personal or telephone interview, the Examiner is
kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue
Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any
overpayments to said Deposit Account.

Respectfully submitted,


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